IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. No. 4097 OF 2012

ARUN RAI @ ARUN KUMAR RAI
@ ARUN KUMAR SUBBA
VERSUS
DEORAJ DEWAN

PRESENT	:	THE HON'BLE JUSTICE ARIJIT BANERJEE
For the Petitioner	:	Mr. Amitava Ghosh, Adv. Mr. Sourav Chatterjee, Adv. Mr. Navojit Mukherjee, Adv
For the Opposite Party	:	Mrs. Usha Maity, Adv. Ms. Tina Mitra, Adv.
Heard on	:	05.06.2015 & 18.06.2015
Judgement on	:	21/07/2015

ARIJIT BANERJEE, J.:

(1) In this revisional application, the petitioner challenges the judgment and order dated 26.10.2012 passed in Misc. Appeal No.12 of 2008 whereby the learned District Judge, Darjeeling set aside the order dated 16.09.2008 passed by the learned Civil Judge (Junior Division), Kurseong dismissing the application of the opposite party/ plaintiff under Section 7 (iii) of the West Bengal Premises Tenancy Act, 1997 and allowing the petitioner's applications under Section 7 (i) and Section 7 (ii) of the said Act.

(2) The learned first appellate court set aside the order permitting the defendant to deposit the rent and allowed the plaintiff's application for striking out of defence against delivery of possession.

(3) On or about 9th June 2006, the opposite party filed O.C suit No. 1 of 2006 in the court of the Civil Judge (Junior Division) at Kurseong for recovery of vacant position of the suit premises and mense profits. On or about 14.08.2006, the petitioner/ defendant filed an application essentially under Section 7 (i) of the West Bengal Premises Tenancy Act, 1997 (in short 'the said Act') for leave to deposit rent in court. However in the petition, it was not mentioned that the same was being filed under Section 7(i) of the said Act. The petitioner also filed an application on the same date i.e. 14.08.2006 essentially under Section 7 (ii) of the said Act for determining the dispute as to the ownership of the said premises. However it was not mentioned in the said petition that the same was being filed under Section 7 (ii) of the said Act.

(4) By an order dated 20.11.2006 the learned first court dismissed the defendant's said applications inter alia on the ground that it was not mentioned in the said applications under which provision of law the same were filed. The defendant filed an application for amendment of the said two petitions. The amendment application was dismissed by an order dated 16.09.2008. However, the learned first Court recorded that the defendant's application praying for leave to deposit current rent can be considered as a petition under section 7(i) of

the said Act. By the same order the learned Jude recorded that there was no default on the part of the defendant in payment of rent and, accordingly, the learned Judge dismissed the plaintiff's application under section 7(iii) of the said Act for striking out of the defence against delivery of possession of the suit premises.

(5) Being aggrieved by the said order dated 16.09.2008, the plaintiff preferred an appeal before the learned District Judge, Darjeeling being Misc. Appeal No.12 of 2008. The Appellate Court allowed the appeal setting aside the permission given to the defendant to deposit current rent and allowed the plaintiff's application for striking out of defence against delivery of possession. The primary ground on which the Appellate Court allowed the appeal was that the learned first court having once rejected the defendant's prayer for leave to deposit current rent could not subsequently allow such prayer.

(6) Being aggrieved by the said Appellate Court's judgement and order dated 26.10.2012, the defendant is before this Court by way of the instant revisional application.

(7) Appearing for the petitioner, Mr. Amitava Ghosh, learned counsel submitted that a court of law can always correct an error either on an application made by the aggrieved party or even *suo motu* upto the stage of execution to do complete justice between the parties. It was submitted that the learned first court had dismissed the defendant's application for leave to deposit rent on an

unsustainable ground that the application did not mention the provision of law under which the same was filed and this error of law was corrected by the learned first court by a subsequent order dated 16.09.2008. He then submitted that non-mentioning of provisions of law under which an application is made, does not defeat the application. He further submitted that the West Bengal Premises Tenancy Act, 1997 is a beneficial legislation and the provisions thereof should be interpreted in favour of the defendant/tenant. He submitted that the learned District Judge did not consider as to whether or not the petitioner/ defendant was a defaulter. In no order of the court below it has been held that the defendant was a defaulter. Hence it was a gross error on the part of the learned District Judge to allow the plaintiff's application for striking out of the defence against delivery of possession.

(8) Mr. Ghosh relied on the decision of this court in the case of **Asit Kumar Dey –vs- Bishudhananda Chaudhury and another** reported in **AIR 1982 Calcutta 55** wherein at paragraph 10 of the judgement it was held that failure to state under what sections of the statute an application was filed did not render the application bad. It is the established principle of law that the court should not be too much concerned as to the form but look into the substance of the matter. In the administration of justice the court will not refuse any application which on the merits the court can grant, simply because the applicant asked the court to exercise its admitted powers under a wrong section.

(9) He then relied on a decision of the Delhi High Court in the case of **M/s Devi Dayal Textile Company and others –vs- Nand Lal** reported in **AIR 1977 Delhi 7** wherein at paragraphs 4 and 7 of the judgement it was observed that it is not only the jurisdiction and power of the court but it is also the court's duty to recall its order if it is found that the same was invalid and had been passed by reason of a mistake of the court and would cause injustice to the party not at fault. Correction of mistake of the court can be done by the court *sou motu* without any application by the parties concerned or even if the court is moved to do so by the parties. The court always has the power to recall an order which has the effect of perpetrating injustice on a party. It is not only a right but the duty of the court to try to correct its own mistake.

(10) Mr. Ghosh then relied on a decision of this court in the case of **Ramprasad Bajaj and others –vs- Development Builders (P) Ltd & Others** reported in **(1991) 1 CHN 493** wherein at paragraphs 15 and 16 of the judgement it was observed that any kind of dispute which affects the amount of rent payable by the tenant including a dispute as to existence of relationship of landlord and tenant between the parties will be a dispute under or within the contemplation of Section 17 (2) of the West Bengal Premises Tenancy Act, 1956. An appropriate order under Section 17(2) cannot be passed without determination of the dispute as to the existence of relationship of landlord and

tenant. Such a decision is however, only tentative as is done in interlocutory proceedings.

(11) The next authority relied upon by Mr. Ghosh is a decision of this court in the case of **Subhendranath Bhattacharya –vs- Smt. Ramala Ghosh and others** reported in **AIR 1995 Calcutta 184** wherein at paragraph 14 of the judgement it was observed that when the defendant makes an application under Section 17 (2) and 17 (2) (A) of the West Bengal Premises Tenancy Act, 1956, it was the duty of the court to determine the period of default, the rent payable and the question of relationship of landlord and tenant. Such an application cannot be dismissed summarily.

(12) The learned counsel then relied on a decision of the Hon'ble Supreme court in the case of **Lily Thomas and others –vs- Union of India and Others** reported in **(2000) 6 SCC 224** wherein at paragraph 52 of the judgement it was observed that power of rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality.

(13) Finally Mr Ghosh relied on a decision of the Hon'ble Apex Court in the case of **Owners and Parties Interested in M.V. "Valipero" –vs- Fernandeo Lopez & Others** reported in (**1989) 4 SCC 671** wherein at paragraph 18 of the judgement the Hon'ble Apex Court observed as follows:

"Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system."

(14) Mr. Ghosh finally submitted that the learned trial court had initially dismissed the defendant's application for leave to deposit rent on a legally unsustainable ground. Such error, the learned Trial Court corrected by a subsequent order in exercise of its inherent jurisdiction. The Appellate Court should not have interfered with the Trial Court's order dated 16.09.2008 whereby the learned Trial Court corrected its error it had committed earlier.

(15) Appearing on behalf of the opposite party Ms. Maity learned counsel submitted that the suit was filed on 09.06.2006. The defendant entered appearance on 21.06.2006 but did not file any application under Sections 7 (i) and 7 (ii) of the said Act within one month of appearance. She then submitted that, in any event, even assuming that the defendant's application for leave to deposit rent was made under section 7 (i) of the said Act, the application was premature. Prayer was made in the application for leave to deposit rent in the

month of August 2006 when the defendant should have prayed for leave to deposit rent from September 2006. She submitted that an application under Section 7 (ii) of the said Act can be considered at the trial of the suit. Any dispute regarding landlord-tenant relationship can be resolved only at the final hearing of the suit.

(16) Ms. Maity then submitted that the deposit of arrear rent by the defendant with the Rent Controller on 17.07.2006 for the period March 1998 to June 2006 (page 83 of the petition) was bad in law since the plaintiff/ landlord had never refused to accept the rent. She further submitted that the learned first court having once rejected the defendant's prayer for leave to deposit current rent, could not subsequently allow the same prayer in reversal of the court's earlier order. Such an act adversely affects judicial discipline. Once a court of law pronounces an order, it attains finality and the same can be reversed or modified only on an application for review or in revision or an appeal before a higher forum. She submitted that the Appellate Court rightly reversed the Trial Court's order dated 16.09.2008.

(17) Ms. Maity relied on a decision of the Apex Court in the case of **Pradeep Kumar Maskara and others –vs- State of West Bengal and others** reported in **2014 (3) CLJ (SC) 177.** In the said case the question that fell for consideration was whether the West Bengal Land Reforms and Tenancy Tribunal was justified in dismissing the application of the appellants and

refusing to make correction in the records of right in terms of direction of the High Court. The Hon'ble Supreme Court held that the Tribunal's order was erroneous in law and the High Court also erred in affirming the order of the Tribunal. With respect to learned counsel, I am unable to appreciate as to how this case is relevant for the purpose of deciding the present case.

(18) The learned counsel then referred to a decision of this court in the case of **Anup Nandi –vs- Union of India and another** reported in **(2015) 2 WBLR (Cal) 242**. In that case it was held that a judicial pronouncement even if wrong and not satisfactory attains finality if no appeal is preferred against the same and the same must be followed by the executive. With respect again, I do not find any relevance of the said decision in the facts of the present case.

(19) The third decision relied upon by Ms Maity is in the case of **Popat & Kotecha Property –vs- Ashim Kumar Dey** reported in **2014 (4) CHN (Cal) 614.** In that case it was held that at the time of disposing of the application under Section 7 (ii) of the West Bengal Premises Tenancy Act, 1997, the court has to decide whether deposits made in the office of the Rent Control were valid or not with special reference to Sections 21 and 22. The court also has to ascertain whether the maintenance charge, property tax and Municipal surcharge were part of the rent or not. With great respect, the issues involved in the present case are completely different and the said case in my opinion has no manner of application to the instant case.

(20) Finally learned counsel relied on a decision of a Division Bench of this court in the case of **Sri Bapi Chatterjee –vs- Smt. Arati Halder** reported in **2015 (1) CLJ 97.** In that case it was held that in terms of Section 17(2) of West Bengal Premises Tenancy Act, 1956, in the event there is any dispute as to the amount of rent payable by the tenant, the tenant shall within the time specified in sub-section (1) deposit in court the amount admitted by him to be due from him together with an application to the court for determination of the rent payable. The provisions of Section 17 (1) and (17 (2) of the West Bengal Premises Tenancy Act, 1956 are not controlled by either Section 21 or Section 22 of the said Act providing for deposit of rent with the Rent Controller when the landlord refuses to accept the contractual rent and the tenant in order to avoid default has to deposit such rent with the Rent Controller in accordance with the provision of Sections 21 and 22 of the said Act of 1956. With respect to the learned counsel, I am unable to appreciate as to how the said case helps the plaintiffs cause.

(21) I have considered the rival contentions of the parties.

(22) The Ld. First Court had initially dismissed the petitioner's application for leave to deposit current rent primarily on the ground that the application did not mention the provision of law under which such application was made. In other words, it was not mentioned in the application that the same was being made under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997.

Subsequently, by the order dated 16th September, 2008 the Ld. Trial Judge held that the defendant's application for leave to deposit current rent could be considered to be an application under Section 7 (1) of the said Act and allowed such application. In my view, the Ld. Trial Judge acted in a proper manner. Non-mentioning of a provision of law under which an application is made is not a ground for rejecting the application so long as the Court has power to entertain such application. Technicalities should not be allowed to stand in the way of doing complete justice between the parties. Procedure is after all, a handmaid of justice. Procedure must always be subservient to justice and procedural technicalities cannot be allowed to eclipse or overshadow substantive law and justice.

(23) The Ld. Trial Judge had dismissed the application of the petitioner/defendant on a ground which is not tenable in law. Having realized the same at a subsequent stage, the Ld. Trial Judge rectified the error. No Court of law should be shy of setting right a mistake committed at an earlier stage of the proceeding. All Civil Courts have inherent power to rectify an error which it might have committed at an earlier stage. Hence, in my opinion, the Ld. Trial Judge was right in correcting a mistake that he had committed earlier.

(24) The view of the Ld. Appellate Court that the Ld. Trial Judge having at one stage dismissed the application of the defendant, subsequently could not allow such application is not sustainable. While the finality of a judgment and a

judicial order is a desirable concept, the same cannot be carried to a degree of fault. If substantive justice demands that the Court passes an order which it had declined to pass earlier, the Court would be failing in its duty if it does not pass such order at the subsequent stage. No Court of justice should adopt a tardy approach in that regard. No court of law should jealously guard or uphold its own order if subsequently the conscience of the Court feels that a different order or even a diametrically opposite order is required to be passed for the ends of justice. The primary duty of a court of law is to do complete justice between the parties before it to the satisfaction of the Court's conscience. So long as a court is in seisin of a matter, it can always pass an order which it had earlier declined to pass if the interest of justice so warrants. Procedure is not an end in itself but only a means far rendering justice to the parties before a court of law. Procedural technicalities must give way to substantive justice.

(25) It is also important to note that nowhere the Courts below have held that the defendant was a defaulter. Hence, in my view, an order allowing the plaintiff's application under Section 7 (3) of the 1997 Act was not warranted in the facts and circumstances of the case.

(26) In my view, the approach of the Ld. Trial Judge was correct and the order dated 16th September, 2008 cannot be faulted. The said order did not warrant interference by the Appellate Court. In view of the aforesaid discussion, I am unable to agree with the approach of the Appellate Court and I am unable to

sustain the order under challenge. Accordingly, this application succeeds. The judgment and order dated 26th October, 2012 passed by the Appellate Court is set aside. The judgment and order dated 16th September, 2008 passed by the Ld. First Court is restored.

(27) Since the suit is pending from the year 2006 it is desirable that the same be disposed of at an early date. The Ld. Trial Judge is directed to dispose of the suit as expeditiously as possible and positively within a period of one year from the date of communication of this order. For this purpose, if necessary the Ld. Judge will hold hearing on a day to day basis and shall not grant unnecessary adjournments to the parties.

(28) CO No. 4097 of 2012 is accordingly disposed of.

(29) Urgent certified photocopy of this judgment, in applied for, be given to the parties upon compliance of all necessary formalities.

(Arijit Banerjee, J.)